

# International Dispute Resolution Procedures

Including Mediation and Arbitration Rules

*Rules Amended and Effective June 1, 2009*

*Fee Schedule Amended and Effective June 1, 2010*



International Centre  
for Dispute Resolution

The International Division of the American Arbitration Association

[www.adr.org](http://www.adr.org)

## About the American Arbitration Association®

The global leader in conflict management since 1926, the American Arbitration Association is a not-for-profit, public service organization committed to the resolution of disputes through the use of arbitration, mediation, conciliation, negotiation, democratic elections and other voluntary procedures. Every year, more than 100,000 cases are filed with the Association in a full range of matters including commercial finance, construction, labor and employment, health care, insurance, mass claims and technology disputes. Through its offices in the United States, Ireland, Mexico, and Singapore the AAA provides a forum for the hearing of disputes, rules and procedures and a roster of impartial experts to resolve cases.

## Our Shared Mission

The American Arbitration Association is dedicated to the development and widespread use of prompt, effective and economical methods of dispute resolution. As a not-for-profit organization, our mission is one of service and education.

We are committed to providing exceptional neutrals, proficient case management, dedicated personnel, advanced education and training and innovative process knowledge to meet conflict management and dispute resolution needs of the public now and in the future.

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## Table of Contents

### International Dispute Resolution Procedures

Introduction	6
International Mediation	6
International Arbitration	7

### **International Mediation Rules**

<b>International Mediation Rules</b>	10
1. Agreement of Parties	10
2. Initiation of Mediation	10
3. Representation	11
4. Appointment of the Mediator	11
5. Mediator's Impartiality and Duty to Disclose	12
6. Vacancies	13
7. Duties and Responsibilities of the Mediator	13
8. Responsibilities of the Parties	14
9. Privacy	15
10. Confidentiality	15
11. No Stenographic Record	16
12. Termination of Mediation	16
13. Exclusion of Liability	16
14. Interpretation and Application of Procedures	16
15. Deposits	17
16. Expenses	17
17. Cost of Mediation	17
18. Language	18

## International Dispute Resolution Procedures

Conference Room Rental	18
<b>International Arbitration Rules</b>	18
<b>Commencing the Arbitration</b>	19
Notice of Arbitration and Statement of Claim	19
Statement of Defense and Counterclaim	20
Amendments to Claims	21
<b>The Tribunal</b>	21
Number of Arbitrators	21
Appointment of Arbitrators	21
Impartiality and Independence of Arbitrators	22
Challenge of Arbitrators	23
Replacement of an Arbitrator	24
<b>General Conditions</b>	25
Representation	25
Place of Arbitration	25
Language	26
Pleas as to Jurisdiction	26
Conduct of the Arbitration	27
Further Written Statements	28
Notices	28
Evidence	29
Hearings	29
Interim Measures of Protection	30
Experts	31
Default	31
Closure of Hearing	32
Waiver of Rules	32
Awards, Decisions and Rulings	32
Form and Effect of the Award	33

Applicable Laws and Remedies	34
Settlement or Other Reasons for Termination	34
Interpretation or Correction of the Award	35
Costs	35
Compensation of Arbitrators	36
Deposit of Costs	36
Confidentiality	37
Exclusion of Liability	37
Interpretation of Rules	38
Emergency Measure of Protection	38
Administrative Fee Schedules (Standard and Flexible Fee)	41
Standard Fee Schedule	42
Refund Schedule	43
Flexible Fee Schedule	44
Hearing Room Rental	46

### Introduction

The international business community uses arbitration to resolve commercial disputes arising in the global marketplace. Supportive laws are in place. The New York Convention of 1958 has been widely adopted, providing a favorable legislative climate that enables the enforcement of arbitration clauses. International commercial arbitration awards are recognized by national courts in most parts of the world, even more than foreign court judgments. A key component to the successful resolution of an international commercial dispute is the role played by the administrative institution. The International Centre for Dispute Resolution® (ICDR) is the international division of the American Arbitration Association (AAA) charged with the exclusive administration of all of the AAA's international matters. The ICDR's experience, international expertise and multilingual staff forms an integral part of the dispute resolution process. The ICDR's international system is premised on its ability to move the matter forward, facilitate communications, ensure that qualified arbitrators and mediators are appointed, control costs, understand cultural sensitivities, resolve procedural impasses and properly interpret and apply its International Mediation and Arbitration Rules. Additionally, the ICDR has many cooperative agreements with arbitral institutions around the world for facilitating the administration of its international cases.

### International Mediation

The parties might wish to submit their dispute to an international mediation prior to arbitration. In mediation, an impartial and independent mediator assists the parties in reaching a settlement but does not have the authority to make a binding decision or award. International Mediation is administered by the ICDR in accordance with its International Mediation Rules. There is no additional administrative fee where parties to a pending arbitration attempt to mediate their dispute under the ICDR's auspices.

If the parties want to adopt mediation as a part of their contractual dispute settlement procedure, they can insert the following mediation clause into their contract in conjunction with a standard arbitration provision:

*If a dispute arises out of or relates to this contract, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation in accordance with the International Mediation Rules of the International Centre for Dispute Resolution before resorting to arbitration, litigation or some other dispute resolution procedure.*

If the parties want to use a mediator to resolve an existing dispute, they can enter into the following submission:

*The parties hereby submit the following dispute to mediation administered by the International Centre for Dispute Resolution in accordance with its International Mediation Rules. (The clause may also provide for the qualifications of the mediator(s), method of payment, locale of meetings and any other item of concern to the parties.)*

The ICDR can schedule the mediation anywhere in the world and will propose a list of specialized international mediators.

## International Arbitration

As the ICDR is a division of the AAA, parties can arbitrate future disputes under these Rules by inserting either of the following clauses into their contracts:

*“Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be determined by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules.”*

or

*“Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be determined by arbitration administered by the American Arbitration Association in accordance with its International Arbitration Rules.”*

The parties may wish to consider adding:

- a. *“The number of arbitrators shall be (one or three)”*;
- b. *“The place of arbitration shall be (city and/or country)”*; or
- c. *“The language(s) of the arbitration shall be \_\_\_\_\_.”*

Parties are encouraged, when writing their contracts or when a dispute arises, to request a conference, in person or by telephone, with the ICDR, to discuss an appropriate method for selection of arbitrators or any other matter that might facilitate efficient arbitration of the dispute.

Under these Rules, the parties are free to adopt any mutually agreeable procedure for appointing arbitrators, or may designate arbitrators upon whom they agree. Parties can reach agreements concerning appointing arbitrators either when writing their contracts or after a dispute has arisen. This flexible procedure permits parties to utilize whatever method they consider best suits their needs. For example, parties may choose to have a sole arbitrator or a tribunal of three or more. They may agree that arbitrators shall be appointed by the ICDR, or that each side shall designate one arbitrator and those two shall name a third, with the ICDR making appointments if the tribunal is not promptly formed by that procedure. Parties may mutually request the ICDR to submit to them a list of arbitrators from which each can delete names not acceptable to it, or the parties may instruct the ICDR to appoint arbitrators without the submission of lists, or may leave that matter to the sole discretion of the ICDR. Parties also may agree on a variety of other methods for establishing the tribunal. In any event, if parties are unable to agree on a procedure for appointing arbitrators or on the designation of arbitrators, the ICDR, after inviting consultation by the parties, will appoint the arbitrators. The Rules thus provide for the fullest exercise of party autonomy, while assuring that the ICDR is available to act if the parties cannot reach mutual agreement.

By providing for arbitration under these Rules, parties can avoid the uncertainty of having to petition a local court to resolve procedural impasses. These Rules, as administered by the IDCR, are intended to provide prompt, effective and economical arbitration services to the global business community.

Whenever a singular term is used in the Rules, such as “party,” “claimant” or “arbitrator,” that term shall include the plural if there is more than one such entity.

Parties filing an international case with the International Centre for Dispute Resolution, or the American Arbitration Association, may file online via AAAWebFile® at **www.adr.org**. For filing assistance, parties may directly contact the ICDR in New York, Bahrain, Singapore or any one of the AAA’s regional offices.

If you would like to file a case by mail or fax, please complete the appropriate form(s) and forward to AAA/ICDR Case Filing Services.

### **International Centre for Dispute Resolution**

A Division of the American Arbitration Association

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Voorhees, NJ 08043

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Toll free number in the US 877-495-4185

Fax number 877-304-8457

Fax number outside the US: 212-484-4178

Email box: **casefiling@adr.org**

Further information about these Rules can be secured by contacting the International Centre for Dispute Resolution at 212.484.4181 or by visiting the ICDR’s Web site at **www.icdr.org**.

The English language version of the Rules is the official text for questions of interpretation.

## International Mediation Rules

### 1. Agreement of Parties

Whenever parties have agreed in writing to mediate disputes under these *International Mediation Rules*, or have provided for mediation or conciliation of existing or future international disputes under the auspices of the International Centre for Dispute Resolution, the international division of the American Arbitration Association, or the American Arbitration Association without designating particular Rules, they shall be deemed to have made these Rules, as amended and in effect as of the date of the submission of the dispute, a part of their agreement.

The parties by mutual agreement may vary any part of these Rules including, but not limited to, agreeing to conduct the mediation via telephone or other electronic or technical means.

### 2. Initiation of Mediation

Any party or parties to a dispute may initiate mediation under the ICDR's auspices by making a request for mediation to any of the ICDR's regional offices or case management centers via telephone, email, regular mail or fax. Requests for mediation may also be filed online via AAAWebFile at [www.adr.org](http://www.adr.org).

The party initiating the mediation shall simultaneously notify the other party or parties of the request. The initiating party shall provide the following information to the ICDR and the other party or parties as applicable:

- (i) A copy of the mediation provision of the parties' contract or the parties' stipulation to mediate.
- (ii) The names, regular mail addresses, email addresses and telephone numbers of all parties to the dispute and representatives, if any, in the mediation.

- (iii) A brief statement of the nature of the dispute and the relief requested.
- (iv) Any specific qualifications the mediator should possess.

Where there is no preexisting stipulation or contract by which the parties have provided for mediation of existing or future disputes under the auspices of the ICDR, a party may request the ICDR to invite another party to participate in “mediation by voluntary submission”. Upon receipt of such a request, the ICDR will contact the other party or parties involved in the dispute and attempt to obtain a submission to mediation.

### 3. Representation

Subject to any applicable law, any party may be represented by persons of the party’s choice. The names and addresses of such persons shall be communicated in writing to all parties and to the ICDR.

### 4. Appointment of the Mediator

Parties may search the online profiles of the ICDR’s Panel of Mediators at **[www.aaamediation.com](http://www.aaamediation.com)** in an effort to agree on a mediator. If the parties have not agreed to the appointment of a mediator and have not provided any other method of appointment, the mediator shall be appointed in the following manner:

- (i) Upon receipt of a request for mediation, the ICDR will send to each party a list of mediators from the ICDR’s Panel of Mediators. The parties are encouraged to agree to a mediator from the submitted list and to advise the ICDR of their agreement.

- (ii) If the parties are unable to agree upon a mediator, each party shall strike unacceptable names from the list, number the remaining names in order of preference, and return the list to the ICDR. If a party does not return the list within the time specified, all mediators on the list shall be deemed acceptable. From among the mediators who have been mutually approved by the parties, and in accordance with the designated order of mutual preference, the ICDR shall invite a mediator to serve.
- (iii) If the parties fail to agree on any of the mediators listed, or if acceptable mediators are unable to serve, or if for any other reason the appointment cannot be made from the submitted list, the ICDR shall have the authority to make the appointment from among other members of the Panel of Mediators without the submission of additional lists.

### 5. Mediator's Impartiality and Duty to Disclose

ICDR mediators are required to abide by the *Model Standards of Conduct for Mediators* in effect at the time a mediator is appointed to a case. Where there is a conflict between the *Model Standards* and any provision of these *Mediation Rules*, these *Mediation Rules* shall govern. The *Standards* require mediators to (i) decline a mediation if the mediator cannot conduct it in an impartial manner, and (ii) disclose, as soon as practicable, all actual and potential conflicts of interest that are reasonably known to the mediator and could reasonably be seen as raising a question about the mediator's impartiality.

Prior to accepting an appointment, ICDR mediators are required to make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest for the mediator. ICDR mediators are required to disclose any circumstance likely to create a presumption of bias or prevent a resolution of the parties' dispute within the time

frame desired by the parties. Upon receipt of such disclosures, the ICDR shall immediately communicate the disclosures to the parties for their comments.

The parties may, upon receiving disclosure of actual or potential conflicts of interest of the mediator, waive such conflicts and proceed with the mediation. In the event that a party disagrees as to whether the mediator shall serve, or in the event that the mediator's conflict of interest might reasonably be viewed as undermining the integrity of the mediation, the mediator shall be replaced.

## 6. Vacancies

If any mediator shall become unwilling or unable to serve, the ICDR will appoint another mediator, unless the parties agree otherwise, in accordance with section 4.

## 7. Duties and Responsibilities of the Mediator

- (i) The mediator shall conduct the mediation based on the principle of party self-determination. Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome.
- (ii) The mediator is authorized to conduct separate or *ex parte* meetings and other communications with the parties and/or their representatives, before, during, and after any scheduled mediation conference. Such communications may be conducted via telephone, in writing, via email, online, in person or otherwise.
- (iii) The parties are encouraged to exchange all documents pertinent to the relief requested. The mediator may request the exchange of memoranda on issues, including the underlying interests and the history of the parties'

negotiations. Information that a party wishes to keep confidential may be sent to the mediator, as necessary, in a separate communication with the mediator.

- (iv) The mediator does not have the authority to impose a settlement on the parties but will attempt to help them reach a satisfactory resolution of their dispute. Subject to the discretion of the mediator, the mediator may make oral or written recommendations for settlement to a party privately or, if the parties agree, to all parties jointly.
- (v) In the event that a complete settlement of all or some issues in dispute is not achieved within the scheduled mediation conference(s), the mediator may continue to communicate with the parties, for a period of time, in an ongoing effort to facilitate a complete settlement.
- (vi) The mediator is not a legal representative of any party and has no fiduciary duty to any party.

### 8. Responsibilities of the Parties

The parties shall ensure that appropriate representatives of each party, having authority to consummate a settlement, attend the mediation conference.

Prior to and during the scheduled mediation conference(s), the parties and their representatives shall, as appropriate to each party's circumstances, exercise their best efforts to prepare for and engage in a meaningful and productive mediation.

## 9. Privacy

Mediation conferences and related mediation communications are private proceedings. The parties and their representatives may attend mediation conferences. Other persons may attend only with the permission of the parties and with the consent of the mediator.

## 10. Confidentiality

Subject to applicable law or the parties' agreement, confidential information disclosed to a mediator by the parties or by other participants (witnesses) in the course of the mediation shall not be divulged by the mediator. The mediator shall maintain the confidentiality of all information obtained in the mediation, and all records, reports, or other documents received by a mediator while serving in that capacity shall be confidential.

The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum.

The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial, or other proceeding the following, unless agreed to by the parties or required by applicable law:

- (i) Views expressed or suggestions made by a party or other participant with respect to a possible settlement of the dispute;
- (ii) Admissions made by a party or other participant in the course of the mediation proceedings;
- (iii) Proposals made or views expressed by the mediator; or

## International Dispute Resolution Procedures

- (iv) The fact that a party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

### 11. No Stenographic Record

There shall be no stenographic record of the mediation process.

### 12. Termination of Mediation

The mediation shall be terminated:

- (i) By the execution of a settlement agreement by the parties; or
- (ii) By a written or verbal declaration of the mediator to the effect that further efforts at mediation would not contribute to a resolution of the parties' dispute; or
- (iii) By a written or verbal declaration of all parties to the effect that the mediation proceedings are terminated; or
- (iv) When there has been no communication between the mediator and any party or party's representative for 21 days following the conclusion of the mediation conference.

### 13. Exclusion of Liability

Neither the ICDR nor any mediator is a necessary party in judicial proceedings relating to the mediation. Neither the ICDR nor any mediator shall be liable to any party for any error, act or omission in connection with any mediation conducted under these Rules.

### 14. Interpretation and Application of Procedures

The mediator shall interpret and apply these Rules insofar as they relate to the mediator's duties and responsibilities. All other Rules shall be interpreted and applied by the ICDR.

## 15. Deposits

Unless otherwise directed by the mediator, the ICDR will require the parties to deposit in advance of the mediation conference such sums of money as it, in consultation with the mediator, deems necessary to cover the costs and expenses of the mediation and shall render an accounting to the parties and return any unexpended balance at the conclusion of the mediation.

## 16. Expenses

All expenses of the mediation, including required traveling and other expenses or charges of the mediator, shall be borne equally by the parties unless they agree otherwise. The expenses of participants for either side shall be paid by the party requesting the attendance of such participants.

## 17. Cost of the Mediation

There is no filing fee to initiate a mediation or a fee to request the ICDR to invite parties to mediate.

The cost of mediation is based on the hourly mediation rate published on the mediator's ICDR profile. This rate covers both mediator compensation and an allocated portion for the ICDR's services. There is a four-hour minimum charge for a mediation conference. Expenses referenced in Section 16 may also apply.

If a matter submitted for mediation is withdrawn or cancelled or results in a settlement after the agreement to mediate is filed but prior to the mediation conference the cost is \$250 plus any mediator time and charges incurred.

The parties will be billed equally for all costs unless they agree otherwise.

## International Dispute Resolution Procedures

If you have questions about mediation costs or services visit our website at [www.icdr.org](http://www.icdr.org) or contact us at + 1 212.484.4181.

### 18. Language

If the parties have not agreed otherwise, the language(s) of the mediation shall be that of the documents containing the mediation agreement.

### Conference Room Rental

The costs described above do not include the use of ICDR conference rooms. Conference rooms are available on a rental basis. Please contact your local ICDR office for availability and rates.

## International Arbitration Rules

### Article 1

1. Where parties have agreed in writing to arbitrate disputes under these *International Arbitration Rules* or have provided for arbitration of an international dispute by the International Centre for Dispute Resolution or the American Arbitration Association without designating particular Rules, the arbitration shall take place in accordance with these Rules, as in effect at the date of commencement of the arbitration, subject to whatever modifications the parties may adopt in writing.
2. These Rules govern the arbitration, except that, where any such rule is in conflict with any provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

3. These Rules specify the duties and responsibilities of the administrator, the International Centre for Dispute Resolution, a division of the American Arbitration Association. The administrator may provide services through its Centre, located in New York, or through the facilities of arbitral institutions with which it has agreements of cooperation.

## **Commencing the Arbitration**

### **Notice of Arbitration and Statement of Claim**

#### **Article 2**

1. The party initiating arbitration (“claimant”) shall give written notice of arbitration to the administrator and at the same time to the party against whom a claim is being made (“respondent”).
2. Arbitral proceedings shall be deemed to commence on the date on which the administrator receives the notice of arbitration.
3. The notice of arbitration shall contain a statement of claim including the following:
  - a. a demand that the dispute be referred to arbitration;
  - b. the names, addresses and telephone numbers of the parties;
  - c. a reference to the arbitration clause or agreement that is invoked;
  - d. a reference to any contract out of or in relation to which the dispute arises;
  - e. a description of the claim and an indication of the facts supporting it;
  - f. the relief or remedy sought and the amount claimed; and
  - g. may include proposals as to the means of designating and the number of arbitrators, the place of arbitration and the language(s) of the arbitration.

## International Dispute Resolution Procedures

4. Upon receipt of the notice of arbitration, the administrator shall communicate with all parties with respect to the arbitration and shall acknowledge the commencement of the arbitration.

### Statement of Defense and Counterclaim

#### Article 3

1. Within 30 days after the commencement of the arbitration, a respondent shall submit a written statement of defense, responding to the issues raised in the notice of arbitration, to the claimant and any other parties, and to the administrator.
2. At the time a respondent submits its statement of defense, a respondent may make counterclaims or assert setoffs as to any claim covered by the agreement to arbitrate, as to which the claimant shall within 30 days submit a written statement of defense to the respondent and any other parties and to the administrator.
3. A respondent shall respond to the administrator, the claimant and other parties within 30 days after the commencement of the arbitration as to any proposals the claimant may have made as to the number of arbitrators, the place of the arbitration or the language(s) of the arbitration, except to the extent that the parties have previously agreed as to these matters.
4. The arbitral tribunal, or the administrator if the arbitral tribunal has not yet been formed, may extend any of the time limits established in this article if it considers such an extension justified.

## Amendments to Claims

### Article 4

During the arbitral proceedings, any party may amend or supplement its claim, counterclaim or defense, unless the tribunal considers it inappropriate to allow such amendment or supplement because of the party's delay in making it, prejudice to the other parties or any other circumstances. A party may not amend or supplement a claim or counterclaim if the amendment or supplement would fall outside the scope of the agreement to arbitrate.

## The Tribunal

### Number of Arbitrators

#### Article 5

If the parties have not agreed on the number of arbitrators, one arbitrator shall be appointed unless the administrator determines in its discretion that three arbitrators are appropriate because of the large size, complexity or other circumstances of the case.

### Appointment of Arbitrators

#### Article 6

1. The parties may mutually agree upon any procedure for appointing arbitrators and shall inform the administrator as to such procedure.
2. The parties may mutually designate arbitrators, with or without the assistance of the administrator. When such designations are made, the parties shall notify the administrator so that notice of the appointment can be communicated to the arbitrators, together with a copy of these Rules.

## International Dispute Resolution Procedures

3. If within 45 days after the commencement of the arbitration, all of the parties have not mutually agreed on a procedure for appointing the arbitrator(s) or have not mutually agreed on the designation of the arbitrator(s), the administrator shall, at the written request of any party, appoint the arbitrator(s) and designate the presiding arbitrator. If all of the parties have mutually agreed upon a procedure for appointing the arbitrator(s), but all appointments have not been made within the time limits provided in that procedure, the administrator shall, at the written request of any party, perform all functions provided for in that procedure that remain to be performed.
4. In making such appointments, the administrator, after inviting consultation with the parties, shall endeavor to select suitable arbitrators. At the request of any party or on its own initiative, the administrator may appoint nationals of a country other than that of any of the parties.
5. Unless the parties have agreed otherwise no later than 45 days after the commencement of the arbitration, if the notice of arbitration names two or more claimants or two or more respondents, the administrator shall appoint all the arbitrators.

## Impartiality and Independence of Arbitrators

### Article 7

1. Arbitrators acting under these Rules shall be impartial and independent. Prior to accepting appointment, a prospective arbitrator shall disclose to the administrator any circumstance likely to give rise to justifiable doubts as to the arbitrator's impartiality or independence. If, at any stage during the arbitration, new circumstances arise that may give rise to such doubts, an arbitrator shall promptly disclose such circumstances to the parties and to the administrator. Upon receipt of such

information from an arbitrator or a party, the administrator shall communicate it to the other parties and to the tribunal.

2. No party or anyone acting on its behalf shall have any *ex parte* communication relating to the case with any arbitrator, or with any candidate for appointment as party-appointed arbitrator except to advise the candidate of the general nature of the controversy and of the anticipated proceedings and to discuss the candidate's qualifications, availability or independence in relation to the parties, or to discuss the suitability of candidates for selection as a third arbitrator where the parties or party designated arbitrators are to participate in that selection. No party or anyone acting on its behalf shall have any *ex parte* communication relating to the case with any candidate for presiding arbitrator.

## Challenge of Arbitrators

### Article 8

1. A party may challenge any arbitrator whenever circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence. A party wishing to challenge an arbitrator shall send notice of the challenge to the administrator within 15 days after being notified of the appointment of the arbitrator or within 15 days after the circumstances giving rise to the challenge become known to that party.
2. The challenge shall state in writing the reasons for the challenge.
3. Upon receipt of such a challenge, the administrator shall notify the other parties of the challenge. When an arbitrator has been challenged by one party, the other party or parties may agree to the acceptance of the challenge and, if there is agreement, the arbitrator shall withdraw. The challenged arbitrator may also withdraw from office in the absence of such agreement. In neither

## International Dispute Resolution Procedures

case does withdrawal imply acceptance of the validity of the grounds for the challenge.

### Article 9

If the other party or parties do not agree to the challenge, or the challenged arbitrator does not withdraw, the administrator in its sole discretion shall make the decision on the challenge.

## Replacement of an Arbitrator

### Article 10

If an arbitrator withdraws after a challenge, or the administrator sustains the challenge, or the administrator determines that there are sufficient reasons to accept the resignation of an arbitrator, or an arbitrator dies, a substitute arbitrator shall be appointed pursuant to the provisions of Article 6, unless the parties otherwise agree.

### Article 11

1. If an arbitrator on a three-person tribunal fails to participate in the arbitration for reasons other than those identified in Article 10, the two other arbitrators shall have the power in their sole discretion to continue the arbitration and to make any decision, ruling or award, notwithstanding the failure of the third arbitrator to participate. In determining whether to continue the arbitration or to render any decision, ruling or award without the participation of an arbitrator, the two other arbitrators shall take into account the stage of the arbitration, the reason, if any, expressed by the third arbitrator for such nonparticipation and such other matters as they consider appropriate in the circumstances of the case. In the event that the two other

arbitrators determine not to continue the arbitration without the participation of the third arbitrator, the administrator on proof satisfactory to it shall declare the office vacant, and a substitute arbitrator shall be appointed pursuant to the provisions of Article 6, unless the parties otherwise agree.

2. If a substitute arbitrator is appointed under either Article 10 or Article 11, the tribunal shall determine at its sole discretion whether all or part of any prior hearings shall be repeated.

## **General Conditions**

### **Representation**

#### **Article 12**

Any party may be represented in the arbitration. The names, addresses and telephone numbers of representatives shall be communicated in writing to the other parties and to the administrator. Once the tribunal has been established, the parties or their representatives may communicate in writing directly with the tribunal.

### **Place of Arbitration**

#### **Article 13**

1. If the parties disagree as to the place of arbitration, the administrator may initially determine the place of arbitration, subject to the power of the tribunal to determine finally the place of arbitration within 60 days after its constitution. All such determinations shall be made having regard for the contentions of the parties and the circumstances of the arbitration.
2. The tribunal may hold conferences or hear witnesses or inspect property or documents at any place it deems appropriate.

## International Dispute Resolution Procedures

The parties shall be given sufficient written notice to enable them to be present at any such proceedings.

### Language

#### Article 14

If the parties have not agreed otherwise, the language(s) of the arbitration shall be that of the documents containing the arbitration agreement, subject to the power of the tribunal to determine otherwise based upon the contentions of the parties and the circumstances of the arbitration. The tribunal may order that any documents delivered in another language shall be accompanied by a translation into the language(s) of the arbitration.

### Pleas as to Jurisdiction

#### Article 15

1. The tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement.
2. The tribunal shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause shall be treated as an agreement independent of the other terms of the contract. A decision by the tribunal that the contract is null and void shall not for that reason alone render invalid the arbitration clause.

3. A party must object to the jurisdiction of the tribunal or to the arbitrability of a claim or counterclaim no later than the filing of the statement of defense, as provided in Article 3, to the claim or counterclaim that gives rise to the objection. The tribunal may rule on such objections as a preliminary matter or as part of the final award.

## Conduct of the Arbitration

### Article 16

1. Subject to these Rules, the tribunal may conduct the arbitration in whatever manner it considers appropriate, provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case.
2. The tribunal, exercising its discretion, shall conduct the proceedings with a view to expediting the resolution of the dispute. It may conduct a preparatory conference with the parties for the purpose of organizing, scheduling and agreeing to procedures to expedite the subsequent proceedings.
3. The tribunal may in its discretion direct the order of proof, bifurcate proceedings, exclude cumulative or irrelevant testimony or other evidence and direct the parties to focus their presentations on issues the decision of which could dispose of all or part of the case.
4. Documents or information supplied to the tribunal by one party shall at the same time be communicated by that party to the other party or parties.

## Further Written Statements

### Article 17

1. The tribunal may decide whether the parties shall present any written statements in addition to statements of claims and counterclaims and statements of defense, and it shall fix the periods of time for submitting any such statements.
2. The periods of time fixed by the tribunal for the communication of such written statements should not exceed 45 days. However, the tribunal may extend such time limits if it considers such an extension justified.

## Notices

### Article 18

1. Unless otherwise agreed by the parties or ordered by the tribunal, all notices, statements and written communications may be served on a party by air mail, air courier, facsimile transmission, telex, telegram or other written forms of electronic communication addressed to the party or its representative at its last known address or by personal service.
2. For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice, statement or written communication is received. If the last day of such period is an official holiday at the place received, the period is extended until the first business day which follows. Official holidays occurring during the running of the period of time are included in calculating the period.

## Evidence

### Article 19

1. Each party shall have the burden of proving the facts relied on to support its claim or defense.
2. The tribunal may order a party to deliver to the tribunal and to the other parties a summary of the documents and other evidence which that party intends to present in support of its claim, counterclaim or defense.
3. At any time during the proceedings, the tribunal may order parties to produce other documents, exhibits or other evidence it deems necessary or appropriate.

## Hearings

### Article 20

1. The tribunal shall give the parties at least 30 days advance notice of the date, time and place of the initial oral hearing. The tribunal shall give reasonable notice of subsequent hearings.
2. At least 15 days before the hearings, each party shall give the tribunal and the other parties the names and addresses of any witnesses it intends to present, the subject of their testimony and the languages in which such witnesses will give their testimony.
3. At the request of the tribunal or pursuant to mutual agreement of the parties, the administrator shall make arrangements for the interpretation of oral testimony or for a record of the hearing.
4. Hearings are private unless the parties agree otherwise or the law provides to the contrary. The tribunal may require any witness or witnesses to retire during the testimony of other witnesses. The tribunal may determine the manner in which witnesses are examined.

## International Dispute Resolution Procedures

5. Evidence of witnesses may also be presented in the form of written statements signed by them.
6. The tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered by any party. The tribunal shall take into account applicable principles of legal privilege, such as those involving the confidentiality of communications between a lawyer and client.

## Interim Measures of Protection

### Article 21

1. At the request of any party, the tribunal may take whatever interim measures it deems necessary, including injunctive relief and measures for the protection or conservation of property.
2. Such interim measures may take the form of an interim award, and the tribunal may require security for the costs of such measures.
3. A request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.
4. The tribunal may in its discretion apportion costs associated with applications for interim relief in any interim award or in the final award.

## Experts

### Article 22

1. The tribunal may appoint one or more independent experts to report to it, in writing, on specific issues designated by the tribunal and communicated to the parties.
2. The parties shall provide such an expert with any relevant information or produce for inspection any relevant documents or goods that the expert may require. Any dispute between a party and the expert as to the relevance of the requested information or goods shall be referred to the tribunal for decision.
3. Upon receipt of an expert's report, the tribunal shall send a copy of the report to all parties and shall give the parties an opportunity to express, in writing, their opinion on the report. A party may examine any document on which the expert has relied in such a report.
4. At the request of any party, the tribunal shall give the parties an opportunity to question the expert at a hearing. At this hearing, parties may present expert witnesses to testify on the points at issue.

## Default

### Article 23

1. If a party fails to file a statement of defense within the time established by the tribunal without showing sufficient cause for such failure, as determined by the tribunal, the tribunal may proceed with the arbitration.
2. If a party, duly notified under these Rules, fails to appear at a hearing without showing sufficient cause for such failure, as determined by the tribunal, the tribunal may proceed with the arbitration.

## International Dispute Resolution Procedures

3. If a party, duly invited to produce evidence or take any other steps in the proceedings, fails to do so within the time established by the tribunal without showing sufficient cause for such failure, as determined by the tribunal, the tribunal may make the award on the evidence before it.

### Closure of Hearing

#### Article 24

1. After asking the parties if they have any further testimony or evidentiary submissions and upon receiving negative replies or if satisfied that the record is complete, the tribunal may declare the hearings closed.
2. The tribunal in its discretion, on its own motion or upon application of a party, may reopen the hearings at any time before the award is made.

### Waiver of Rules

#### Article 25

A party who knows that any provision of the Rules or requirement under the Rules has not been complied with, but proceeds with the arbitration without promptly stating an objection in writing thereto, shall be deemed to have waived the right to object.

### Awards, Decisions and Rulings

#### Article 26

1. When there is more than one arbitrator, any award, decision or ruling of the arbitral tribunal shall be made by a majority of the arbitrators. If any arbitrator fails to sign the award, it shall be

accompanied by a statement of the reason for the absence of such signature.

2. When the parties or the tribunal so authorize, the presiding arbitrator may make decisions or rulings on questions of procedure, subject to revision by the tribunal.

## Form and Effect of the Award

### Article 27

1. Awards shall be made in writing, promptly by the tribunal, and shall be final and binding on the parties. The parties undertake to carry out any such award without delay.
2. The tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons need be given.
3. The award shall contain the date and the place where the award was made, which shall be the place designated pursuant to Article 13.
4. An award may be made public only with the consent of all parties or as required by law.
5. Copies of the award shall be communicated to the parties by the administrator.
6. If the arbitration law of the country where the award is made requires the award to be filed or registered, the tribunal shall comply with such requirement.
7. In addition to making a final award, the tribunal may make interim, interlocutory or partial orders and awards.
8. Unless otherwise agreed by the parties, the administrator may publish or otherwise make publicly available selected awards, decisions and rulings that have been edited to conceal the names of the parties and other identifying details or that have been made publicly available in the course of enforcement or otherwise.

## Applicable Laws and Remedies

### Article 28

1. The tribunal shall apply the substantive law(s) or rules of law designated by the parties as applicable to the dispute. Failing such a designation by the parties, the tribunal shall apply such law(s) or rules of law as it determines to be appropriate.
2. In arbitrations involving the application of contracts, the tribunal shall decide in accordance with the terms of the contract and shall take into account usages of the trade applicable to the contract.
3. The tribunal shall not decide as *amiable compositeur* or *ex aequo et bono* unless the parties have expressly authorized it to do so.
4. A monetary award shall be in the currency or currencies of the contract unless the tribunal considers another currency more appropriate, and the tribunal may award such pre-award and post-award interest, simple or compound, as it considers appropriate, taking into consideration the contract and applicable law.
5. Unless the parties agree otherwise, the parties expressly waive and forego any right to punitive, exemplary or similar damages unless a statute requires that compensatory damages be increased in a specified manner. This provision shall not apply to any award of arbitration costs to a party to compensate for dilatory or bad faith conduct in the arbitration.

## Settlement or Other Reasons for Termination

### Article 29

1. If the parties settle the dispute before an award is made, the tribunal shall terminate the arbitration and, if requested by all parties, may record the settlement in the form of an award on agreed terms. The tribunal is not obliged to give reasons for such an award.

2. If the continuation of the proceedings becomes unnecessary or impossible for any other reason, the tribunal shall inform the parties of its intention to terminate the proceedings. The tribunal shall thereafter issue an order terminating the arbitration, unless a party raises justifiable grounds for objection.

## Interpretation or Correction of the Award

### Article 30

1. Within 30 days after the receipt of an award, any party, with notice to the other parties, may request the tribunal to interpret the award or correct any clerical, typographical or computation errors or make an additional award as to claims presented but omitted from the award.
2. If the tribunal considers such a request justified, after considering the contentions of the parties, it shall comply with such a request within 30 days after the request.

## Costs

### Article 31

The tribunal shall fix the costs of arbitration in its award. The tribunal may apportion such costs among the parties if it determines that such apportionment is reasonable, taking into account the circumstances of the case.

## International Dispute Resolution Procedures

Such costs may include:

- a. the fees and expenses of the arbitrators;
- b. the costs of assistance required by the tribunal, including its experts;
- c. the fees and expenses of the administrator;
- d. the reasonable costs for legal representation of a successful party; and
- e. any such costs incurred in connection with an application for interim or emergency relief pursuant to Article 21.

## Compensation of Arbitrators

### Article 32

Arbitrators shall be compensated based upon their amount of service, taking into account their stated rate of compensation and the size and complexity of the case. The administrator shall arrange an appropriate daily or hourly rate, based on such considerations, with the parties and with each of the arbitrators as soon as practicable after the commencement of the arbitration. If the parties fail to agree on the terms of compensation, the administrator shall establish an appropriate rate and communicate it in writing to the parties.

## Deposit of Costs

### Article 33

1. When a party files claims, the administrator may request the filing party to deposit appropriate amounts as an advance for the costs referred to in Article 31, paragraphs (a.), (b.) and (c.).
2. During the course of the arbitral proceedings, the tribunal may request supplementary deposits from the parties.

3. If the deposits requested are not paid in full within 30 days after the receipt of the request, the administrator shall so inform the parties, in order that one or the other of them may make the required payment. If such payments are not made, the tribunal may order the suspension or termination of the proceedings.
4. After the award has been made, the administrator shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

## Confidentiality

### Article 34

Confidential information disclosed during the proceedings by the parties or by witnesses shall not be divulged by an arbitrator or by the administrator. Except as provided in Article 27, unless otherwise agreed by the parties, or required by applicable law, the members of the tribunal and the administrator shall keep confidential all matters relating to the arbitration or the award.

## Exclusion of Liability

### Article 35

The members of the tribunal and the administrator shall not be liable to any party for any act or omission in connection with any arbitration conducted under these Rules, except that they may be liable for the consequences of conscious and deliberate wrongdoing.

## Interpretation of Rules

### Article 36

The tribunal shall interpret and apply these Rules insofar as they relate to its powers and duties. The administrator shall interpret and apply all other Rules.

## Emergency Measures of Protection

### Article 37

1. Unless the parties agree otherwise, the provisions of this Article 37 shall apply to arbitrations conducted under arbitration clauses or agreements entered on or after May 1, 2006.
2. A party in need of emergency relief prior to the constitution of the tribunal shall notify the administrator and all other parties in writing of the nature of the relief sought and the reasons why such relief is required on an emergency basis. The application shall also set forth the reasons why the party is entitled to such relief. Such notice may be given by email, facsimile transmission or other reliable means, but must include a statement certifying that all other parties have been notified or an explanation of the steps taken in good faith to notify other parties.
3. Within one business day of receipt of notice as provided in paragraph 2, the administrator shall appoint a single emergency arbitrator from a special panel of emergency arbitrators designated to rule on emergency applications. Prior to accepting appointment, a prospective emergency arbitrator shall disclose to the administrator any circumstance likely to give rise to justifiable doubts to the arbitrator's impartiality or independence. Any challenge to the appointment of the emergency arbitrator must be made within one business day of the communication by the administrator to the parties of the appointment of the emergency arbitrator and the circumstances disclosed.

4. The emergency arbitrator shall as soon as possible, but in any event within two business days of appointment, establish a schedule for consideration of the application for emergency relief. Such schedule shall provide a reasonable opportunity to all parties to be heard, but may provide for proceedings by telephone conference or on written submissions as alternatives to a formal hearing. The emergency arbitrator shall have the authority vested in the tribunal under Article 15, including the authority to rule on her/his own jurisdiction, and shall resolve any disputes over the applicability of this Article 37.
5. The emergency arbitrator shall have the power to order or award any interim or conservancy measure the emergency arbitrator deems necessary, including injunctive relief and measures for the protection or conservation of property. Any such measure may take the form of an interim award or of an order. The emergency arbitrator shall give reasons in either case. The emergency arbitrator may modify or vacate the interim award or order for good cause shown.
6. The emergency arbitrator shall have no further power to act after the tribunal is constituted. Once the tribunal has been constituted, the tribunal may reconsider, modify or vacate the interim award or order of emergency relief issued by the emergency arbitrator. The emergency arbitrator may not serve as a member of the tribunal unless the parties agree otherwise.
7. Any interim award or order of emergency relief may be conditioned on provision by the party seeking such relief of appropriate security.
8. A request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with this Article 37 or with the agreement to arbitrate or a waiver of the right to arbitrate. If the administrator is directed by a judicial authority to nominate a special master to consider and report

## International Dispute Resolution Procedures

on an application for emergency relief, the administrator shall proceed as in Paragraph 2 of this article and the references to the emergency arbitrator shall be read to mean the special master, except that the special master shall issue a report rather than an interim award.

9. The costs associated with applications for emergency relief shall initially be apportioned by the emergency arbitrator or special master, subject to the power of the tribunal to determine finally the apportionment of such costs.

## **Administrative Fee Schedules (Standard and Flexible Fee)**

The ICDR has two administrative fee options for parties filing claims or counterclaims, the Standard Fee Schedule and Flexible Fee Schedule. The Standard Fee Schedule has a two payment schedule, and the Flexible Fee Schedule has a three payment schedule which offers lower initial filing fees, but potentially higher total administrative fees of approximately 12% to 19% for cases that proceed to a hearing. The administrative fees of the ICDR are based on the amount of the claim or counterclaim. Arbitrator compensation is not included in this schedule. Unless the parties agree otherwise, arbitrator compensation and administrative fees are subject to allocation by the arbitrator in the award.

**Fees for incomplete or deficient filings:** Where the applicable arbitration agreement does not reference the ICDR or the AAA, the ICDR will attempt to obtain the agreement of the other parties to the dispute to have the arbitration administered by the ICDR. However, where the ICDR is unable to obtain the agreement of the parties to have the ICDR administer the arbitration, the ICDR will administratively close the case and will not proceed with the administration of the arbitration. In these cases, the ICDR will return the filing fees to the filing party, less the amount specified in the fee schedule below for deficient filings.

Parties that file demands for arbitration that are incomplete or otherwise do not meet the filing requirements contained in these Rules shall also be charged the amount specified below for deficient filings if they fail or are unable to respond to the ICDR's request to correct the deficiency.

**Fees for additional services:** The ICDR reserves the right to assess additional administrative fees for services performed by the ICDR beyond those provided for in these Rules which may be required by the parties' agreement or stipulation.

**Suspension for Nonpayment:** If arbitrator compensation or administrative charges have not been paid in full, the administrator may so inform the parties in order that one of them may advance the required payment.

## International Dispute Resolution Procedures

If such payments are not made, the tribunal may order the suspension or termination of the proceedings. If no arbitrator has yet been appointed, the ICDR may suspend the proceedings.

### Standard Fee Schedule

An Initial Filing Fee is payable in full by a filing party when a claim, counterclaim, or additional claim is filed. A Final Fee will be incurred for all cases that proceed to their first hearing. This fee will be payable in advance at the time that the first hearing is scheduled. This fee will be refunded at the conclusion of the case if no hearings have occurred. However, if the administrator is not notified at least 24 hours before the time of the scheduled hearing, the Final Fee will remain due and will not be refunded.

These fees will be billed in accordance with the following schedule:

Amount of Claim	Initial Filing Fee	Final Fee
Above \$0 to \$10,000	\$775	\$200
Above \$10,000 to \$75,000	\$975	\$300
Above \$75,000 to \$150,000	\$1,850	\$750
Above \$150,000 to \$300,000	\$2,800	\$1,250
Above \$300,000 to \$500,000	\$4,350	\$1,750
Above \$500,000 to \$1,000,000	\$6,200	\$2,500
Above \$1,000,000 to \$5,000,000	\$8,200	\$3,250
Above \$5,000,000 to \$10,000,000	\$10,200	\$4,000
Above \$10,000,000	Base fee of \$12,800 plus .01% of the amount of claim above \$10,000,000 Fee Capped at \$65,000	\$6,000
Nonmonetary Claims <sup>1</sup>	\$3,350	\$1,250
Deficient Claim Filing <sup>2</sup>	\$350	
Additional Services <sup>3</sup>		

<sup>1</sup> This fee is applicable when a claim or counterclaim is not for a monetary amount. Where a monetary claim amount is not known, parties will be required to state a range of claims or be subject to a filing fee of \$10,200.

<sup>2</sup> The Deficient Claim Filing Fee shall not be charged in cases filed by a consumer in an arbitration governed by the Supplementary Procedures for the Resolution of Consumer-Related Disputes, or in cases filed by an Employee who is submitting their dispute to arbitration pursuant to an employer promulgated plan.

<sup>3</sup> The ICDR may assess additional fees where procedures or services outside the Rules sections are required under the parties' agreement or by stipulation.

Fees are subject to increase if the amount of a claim or counterclaim is modified after the initial filing date. Fees are subject to decrease if the amount of a claim or counterclaim is modified before the first hearing.

The minimum fees for any case having three or more arbitrators are \$2,800 for the filing fee, plus a \$1,250 Case Service Fee.

Parties on cases filed under either the Flexible Fee Schedule or the Standard Fee Schedule that are held in abeyance for one year will be assessed an annual abeyance fee of \$300. If a party refuses to pay the assessed fee, the other party or parties may pay the entire fee on behalf of all parties, otherwise the matter will be administratively closed.

For more information, please contact the ICDR at +212.484.4181.

## Refund Schedule for Standard Fee Schedule

The ICDR offers a refund schedule on filing fees connected with the Standard Fee Schedule. For cases with claims up to \$75,000, a minimum filing fee of \$350 will not be refunded. For all other cases, a minimum fee of \$600 will not be refunded. Subject to the minimum fee requirements, refunds will be calculated as follows:

- > 100% of the filing fee, above the minimum fee, will be refunded if the case is settled or withdrawn within five calendar days of filing.
- > 50% of the filing fee will be refunded if the case is settled or withdrawn between six and 30 calendar days of filing.

## International Dispute Resolution Procedures

- > 25% of the filing fee will be refunded if the case is settled or withdrawn between 31 and 60 calendar days of filing.

No refund will be made once an arbitrator has been appointed (this includes one arbitrator on a three-arbitrator panel). No refunds will be granted on awarded cases.

Note: The date of receipt of the demand for arbitration with the ICDR will be used to calculate refunds of filing fees for both claims and counterclaims.

### Flexible Fee Schedule

A non-refundable Initial Filing Fee is payable in full by a filing party when a claim, counterclaim, or additional claim is filed. Upon receipt of the Demand for Arbitration, the ICDR will promptly initiate the case and notify all parties as well as establish the due date for filing of an Answer, which may include a Counterclaim. In order to proceed with the further administration of the arbitration and appointment of the arbitrator(s), the appropriate, non-refundable Proceed Fee outlined below must be paid.

If a Proceed Fee is not submitted within ninety (90) days of the filing of the Claimant's Demand for Arbitration, the ICDR will administratively close the file and notify all parties.

***No refunds or refund schedule will apply to the Filing or Proceed Fees once received.***

The Flexible Fee Schedule below also may be utilized for the filing of counterclaims. However, as with the Claimant's claim, the counterclaim will not be presented to the arbitrator until the Proceed Fee is paid.

A Final Fee will be incurred for all claims and/or counterclaims that proceed to their first hearing. This fee will be payable in advance when the first hearing is scheduled, but will be refunded at the conclusion of the case if no hearings have occurred. However, if the

administrator is not notified of a cancellation at least 24 hours before the time of the scheduled hearing, the Final Fee will remain due and will not be refunded.

All fees will be billed in accordance with the following schedule:

Amount of Claim	Initial Filing Fee	Proceed Fee	Final Fee
Above \$0 to \$10,000	\$400	475	\$200
Above \$10,000 to \$75,000	\$625	\$500	\$300
Above \$75,000 to \$150,000	\$850	\$1250	\$750
Above \$150,000 to \$300,000	\$1,000	\$2125	\$1,250
Above \$300,000 to \$500,000	\$1,500	\$3,400	\$1,750
Above \$500,000 to \$1,000,000	\$2,500	\$4,500	\$2,500
Above \$1,000,000 to \$5,000,000	\$2,500	\$6,700	\$3,250
Above \$5,000,000 to \$10,000,000	\$3,500	\$8,200	\$4,000
Above \$10,000,000	\$4,500	\$10,300 plus .01% of claim amount over \$10,000,000 up to \$65,000	\$6,000
Nonmonetary <sup>1</sup>	\$2,000	\$2,000	\$1,250
Deficient Claim Filing Fee	\$350		
Additional Services <sup>2</sup>			

<sup>1</sup> This fee is applicable when a claim or counterclaim is not for a monetary amount. Where a monetary claim amount is not known, parties will be required to state a range of claims or be subject to a filing fee of \$3,500 and a proceed fee of \$8,200.

<sup>2</sup> The ICDR reserves the right to assess additional administrative fees for services performed by the ICDR beyond those provided for in these Rules and which may be required by the parties' agreement or stipulation.

## International Dispute Resolution Procedures

All fees are subject to increase if the amount of a claim or counterclaim is modified after the initial filing date. Fees are subject to decrease if the amount of a claim or counterclaim is modified before the first hearing.

The minimum fees for any case having three or more arbitrators are \$1,000 for the Initial Filing Fee; \$2,125 for the Proceed Fee; and \$1,250 for the Final Fee.

Under the Flexible Fee Schedule, a party's obligation to pay the Proceed Fee shall remain in effect regardless of any agreement of the parties to stay, postpone or otherwise modify the arbitration proceedings. Parties that, through mutual agreement, have held their case in abeyance for one year will be assessed an annual abeyance fee of \$300. If a party refuses to pay the assessed fee, the other party or parties may pay the entire fee on behalf of all parties, otherwise the matter will be closed.

Note: The date of receipt by the ICDR of the demand/notice for arbitration will be used to calculate the ninety(90)-day time limit for payment of the Proceed Fee.

For more information, please contact the ICDR at +212.484.4181.

***There is no Refund Schedule in the Flexible Fee Schedule.***

### Hearing Room Rental

The fees described above do not cover the cost of hearing rooms, which are available on a rental basis. Check with the ICDR for availability and rates.

Rules, forms, procedures and guides are subject to periodic change and updating. To ensure that you have the most current information, see our website at **[www.icdr.org](http://www.icdr.org)**.



International Centre  
for Dispute Resolution

The International Division of the American Arbitration Association